

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GALINA LEVCHYK, et al.

Plaintiffs,

v.

BMW OF NORTH AMERICA LLC,

Defendant.

Case No. C22-1703RSM

ORDER DISMISSING CASE FOR  
FAILURE TO PROSECUTE

This matter comes before the Court *sua sponte*. Defendant removed from Snohomish County Superior Court on December 1, 2022. On December 14, the Court ordered the parties to submit a joint status report by January 24, 2023. Dkt. #6. A status report was submitted by Defendant on January 25 with no input from Plaintiffs. Dkt. #8. Plaintiffs' counsel subsequently filed initial disclosures with the Court, indicating an awareness of these proceedings. Dkt. #9. On March 23, 2023, the Court issued a Minute Order pointing out Plaintiffs' failure to participate in the Court-ordered joint status report and noting that Plaintiffs' counsel has not yet been admitted to the Western District of Washington. The Minute Order then states:

Per LCR 83.1(d), if an out of state attorney would like to appear Pro Hac Vice (PHV) in a case, the attorney first must obtain local counsel and an application to appear PHV must be submitted.

Accordingly, Plaintiff is now ORDERED TO SHOW CAUSE on or before Monday, April 3, 2023, why this action should not be dismissed for failure to comply with the Court's Order and the

1 local rules regarding attorney admission. Absent a timely response  
2 to this Minute Order, the case WILL BE DISMISSED without  
prejudice.

3 *Id.* at 1–2. Plaintiffs have failed to file a timely response to this Minute Order or otherwise  
4 communicate with the Court.

5 Rule 41(b) allows district courts to dismiss an action for failure to prosecute or to  
6 comply with rules or a court order. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R. Co.*, 370 U.S.  
7 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962) (a district court's “power to [dismiss an  
8 action for failure to prosecute] is necessary in order to prevent undue delays in the disposition of  
9 pending cases and to avoid congestion” in the calendars of the district courts); *Hells Canyon*  
10 *Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (explaining that “courts  
11 may dismiss under Rule 41(b) sua sponte” for a plaintiff’s failure to prosecute or comply with  
12 the court’s orders or the Federal Rules of Civil Procedure); *Ghazali v. Moran*, 46 F.3d 52, 53  
13 (9th Cir. 1995) (failure to follow a district court’s local rules is a proper ground for dismissal).  
14 Rule 41(b) requires a plaintiff to prosecute their case with “reasonable diligence” if a plaintiff is  
15 to avoid dismissal. *Moore v. Telfon Commc’ns Corp.*, 589 F.2d 959, 967 (9th Cir. 1978)  
16 (quoting *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)). Where a court considers  
17 dismissal as a remedy for failure to prosecute, the court is to consider: “(1) the public’s interest  
18 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
19 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
20 and (5) the availability of less drastic sanctions.” *Thompson v. Hous. Auth. of City of Los*  
21 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

22 Plaintiffs’ failure to communicate with opposing counsel or to obtain local counsel, and  
23 subsequent failure to respond to the Court’s Minute Order or to communicate with the Court has  
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1 led to the conclusion that they are no longer interested in pursuing this lawsuit. This case  
2 cannot be resolved without the participation of Plaintiffs, and the Court is convinced that no  
3 lesser sanction would be appropriate.

4 Having considered the entire record, the Court hereby finds and ORDERS that this case  
5 is DISMISSED without prejudice.  
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7 DATED this 13<sup>th</sup> day of April, 2023.  
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11 RICARDO S. MARTINEZ  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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